

**ARKANSAS COURT OF APPEALS**  
NOT DESIGNATED FOR PUBLICATION  
DIVISION I

CACR 05-781

March 22, 2006

LARRY WAYNE STEPHENS

APPELLANT

V.

STATE OF ARKANSAS

APPEAL FROM THE LONOKE  
COUNTY CIRCUIT COURT  
[CR-04-482]

HONORABLE LANCE HANSHAW,  
CIRCUIT JUDGE

APPELLEE

AFFIRMED

ANDREE LAYTON ROAF, Judge

Appellant Larry Wayne Stephens was convicted of rape, kidnaping, terroristic threatening, and domestic battery. He was sentenced concurrently to forty years, thirty years, fifteen years, and one year in prison. On appeal, Stephens argues that the trial court abused its discretion in admitting into evidence a letter allegedly handwritten by Stephens and that the trial court erred when it denied his directed-verdict motion for the rape charge. We affirm.

At Stephens's trial, Stephanie Weiss testified that, on July 22, 2004, she encountered Stephens, her live-in boyfriend, at her grandmother's house and that he asked her where she had been. Weiss did not tell him where she had been, and Stephens left. When Weiss returned to the house she shared with Stephens a few hours later, she found Stephens there.

Weiss started to leave, and as she was walking down the front steps of the house, Stephens threw a rock, and it struck her windshield. When Weiss drove away in her car, Stephens followed her, and they pulled over to talk. Stephens apologized and asked Weiss to come back home. She drove back to their house and pulled her car under the carport. Stephens pulled up behind her and said, "Do you think you're going to leave?" Stephens hit Weiss several

times. According to Weiss, Stephens “took [her] by [her] neck” into the house. Weiss passed out inside. Stephens threw her onto the couch and accused her of sleeping with her ex-boyfriend.

According to Weiss, Stephens choked her until she passed out. He ripped off her clothes, including her bra and panties. Weiss testified that every time she would move, Stephens would hit or choke her. Stephens ordered Weiss to spread her legs. According to Weiss, she said no, and Stephens grabbed her throat with one hand and spread her legs with the other hand. Stephens said, “Well, I’m going to tell you right now if you’re wet inside,” and he stuck his middle finger inside her vagina. He told her that he was looking for semen. Weiss testified that Stephens continued to hit her. Every time Weiss told him that she had not slept with her ex-boyfriend, Stephens would hit her with a mason jar.

Stephens told Weiss that, if she did not tell him the truth, she “would die a painful death.” Weiss jumped out of a window to get away from Stephens, and she ran to a neighbor’s house. She had cut herself on the window and had to receive stitches for the cuts at a hospital.

Michael Edwards, a nurse at Rebsamen Medical Center, testified that he did an initial assessment of Weiss. Weiss told him that Stephens put his finger in her vagina and accused her of having sex with another man. Sergeant Keenan Carter of the Lonoke Sheriff’s Department testified that he responded to the domestic disturbance call at the home of Stephens and Weiss. According to Carter, Weiss gave him many details regarding what Stephens did to her, but she never mentioned that Stephens had raped her.

The State offered a letter into evidence that, according to Sergeant Sonny Skillern of the Lonoke Sheriff’s Department, was handwritten by Stephens while he was in jail. Skillern testified that Stephens asked him to give the letter to the sheriff. According to Skillern, he did not open the letter, and he gave it to the sheriff. In this letter, Stephens admitted that he was guilty of battery and admitted that he stuck his finger in Weiss’s vagina to check for semen. Stephens objected to this letter being offered into evidence, arguing that the letter was highly prejudicial

and that it was not properly authenticated. The trial court allowed the letter into evidence over Stephens's objection.

At the close of the State's evidence, Stephens made a motion for directed verdict, arguing that the evidence was insufficient to support convictions for kidnaping and rape. At the close of all the evidence, Stephens renewed his motion for directed verdict. The jury convicted Stephens of rape, kidnaping, terroristic threatening, and domestic violence, and Stephens brings this appeal.

A motion for directed verdict is a challenge to the sufficiency of the evidence. *Cook v. State*, 350 Ark. 398, 86 S.W.3d 916 (2002). Evidence, direct or circumstantial, is sufficient if it is substantial. *Id.* Substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture. *Id.* When a defendant challenges the sufficiency of the evidence convicting him, the evidence is viewed in the light most favorable to the State. *Id.* This court will only consider evidence that supports the verdict. *Id.* The uncorroborated testimony of a rape victim alone is sufficient to sustain a conviction. *Standridge v. State*, 357 Ark. 105, 161 S.W.3d 815 (2004).

A person commits the offense of rape if he or she engages in sexual intercourse or deviate sexual activity with another person by forcible compulsion. Ark. Code Ann. § 5-14-103(a)(1)(A) (Supp. 2003). Deviate sexual activity is "any act of sexual gratification involving ... the penetration, however slight, of the labia majora ... of one person by any body member or foreign instrument manipulated by another person." Ark. Code Ann. § 5-14-101(1)(B). Forcible compulsion means "physical force or a threat, express or implied, of death, or physical injury to or kidnaping of any person." Ark. Code Ann. § 5-14-101(2). Sexual gratification is not defined by statute, but the Arkansas Supreme Court has construed the words in accordance with their reasonable and commonly accepted meanings. *Farmer v. State*, 341 Ark. 220, 15 S.W.3d 674 (2000).

Stephens argues that the trial court should have granted his directed-verdict motion as to the rape charge because there was no proof that Stephens engaged in deviate sexual activity.

More specifically, he asserts that there was no proof that he committed an act of sexual gratification, as provided in Ark. Code Ann. § 5-14-101(1). He further contends that the evidence demonstrated nothing more than a battery or assault upon Weiss. Stephens raised this issue as his second point on appeal; however, preservation of Stephens's freedom from double jeopardy requires this court to examine his sufficiency of the evidence argument before addressing trial errors. *Nelson v. State*, \_\_\_ Ark. \_\_\_, \_\_\_ S.W.3d \_\_\_ (Feb. 16, 2006). Stephens does not challenge the sufficiency of the evidence supporting his other convictions.

It is not necessary for the State to provide direct proof in a rape prosecution based on deviate sexual activity that an act was done for sexual gratification if it can be assumed that the desire for sexual gratification is a plausible reason for the act. *Farmer, supra*. The court acknowledged the difficulty in the present day and age to know for certain what is sexually gratifying to another person. *Id.* Short of a confession or physical evidence, sexual gratification, like intent, is rarely capable of proof by direct evidence and must usually be inferred from the circumstances. *Id.*

In *Williams v. State*, 298 Ark. 317, 766 S.W.2d 931 (1989), the court found sufficient evidence of sexual gratification where the defendant inserted his fingers into the victim's vagina. Although the defendant argued that there was no evidence that he did so for sexual gratification, the court held that the plain fact is that when persons other than physicians or other medical personnel insert something in another person's vagina, it is not necessary for the state to provide direct proof that the act was done for sexual gratification. *Id.*

In *Farmer, supra*, the attacker told the victim that he would fix it so that she could not be with anyone else. *Id.* He then put his hand up inside her vagina and squeezed her. *Id.* Despite the victim's testimony that she did not think the attack was sexual in nature or that the attacker's intent was to sexually gratify himself, the court found sufficient evidence of sexual gratification, noting that the evidence demonstrated that there were sexual overtones surrounding the attack. *Id.*

Here, as in *Farmer, supra*, there were sexual overtones surrounding the attack. Weiss testified that Stephens stuck his finger into her vagina to see if she was “wet inside.” Weiss also testified that Stephens told her he was checking for semen. Weiss stuck his finger inside her vagina after ripping off her clothes and undergarments and as he straddled her. From these circumstances, the jury could have inferred that sexual gratification was a plausible reason for the penetration. The trial court therefore did not err when it denied Stephens’s directed-verdict motion as to the rape charge.

Stephens also argues that the trial court abused its discretion in admitting into evidence an unauthenticated letter allegedly written by Stephens. At trial, Skillern testified that, while in custody, Stephens personally handed him a sealed envelope containing a letter. Hand-written on the envelope was the name “Sonny Skillern.” While handing the envelope to Skillern, Stephens stated, “Mr. Sonny, read this and take it to the sheriff.” Skillern further testified that Stephens’s letter was inside of the sealed envelope he received. The letter itself was addressed to “Sonny” just like the envelope. Skillern testified that he did not open the letter, that he gave it to the sheriff, and that he told the sheriff that it was from Stephens. In this letter, Stephens admitted that he would take the battery charge “because that’s all I’m guilty of” and that he was guilty of “only battery second degree.” Stephens further wrote, “I stuck my finger in her vagina and checked her panties for semen because she was with another guy ....” The letter was signed “Larry Wayne Stephens.” Stephens objected to the introduction of the letter, arguing that the fact that Stephens wrote the letter was not authenticated and that the letter was highly prejudicial.

Rulings on the admissibility of evidence lie within the trial court’s discretion, and appellate courts do not reverse those rulings absent an abuse of that discretion and a showing of prejudice. *Box v. State*, 348 Ark. 116, 71 S.W.3d 552 (2002). The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. Ark. R. Evid. 901(a) (2005). Sufficient authentication may be shown by the “[t]estimony of a witness with knowledge

that a matter is what it is claimed to be.” Ark. R. Evid. 901(b)(1). The identification and authentication requirements of Rule 901 are satisfied when the trial judge in his discretion is satisfied that the physical evidence presented is genuine and in reasonable probability has not been tampered with. *Davis v. State*, 350 Ark. 22, 86 S.W.3d 872 (2002).

Here, Skillern testified that Stephens handed him the letter with the direction to take it to the sheriff. The letter was signed “Larry Wayne Stephens,” and Skillern never opened the letter and took it to the sheriff. Skillern was a person with knowledge that the letter was from Stephens and that it in reasonable probability had not been tampered with. Moreover, Stephens cannot show how he was prejudiced by the letter given the overwhelming evidence of his guilt concerning the rape conviction. Even when a trial court errs in admitting evidence, a conviction may be affirmed based upon harmless error, where the evidence of guilt is overwhelming and the error is slight. *Barrett v. State*, 354 Ark. 187, 119 S.W.3d 485 (2003).

Here, overwhelming evidence supports Stephens’s rape conviction. The uncorroborated testimony of a rape victim is sufficient to support a conviction if the testimony satisfies the statutory elements of rape. *Clem v. State*, 351 Ark. 112, 90 S.W.3d 428 (2002). Weiss testified that Stephens forced his finger into her vagina. She testified that Weiss ripped off all her clothes, choked her by grabbing her throat, and threatened her. The nurse who examined Weiss in the emergency room corroborated Weiss’s testimony concerning the rape.

There was also overwhelming evidence of Stephens’s convictions for battery, terroristic threatening, and kidnaping. It is undisputed that Weiss and Stephens lived together. Weiss testified that Stephens grabbed her arms, pushed her over a couch, choked her, and repeatedly hit her with a mason jar. She further testified that Stephens told her that she could leave only if she admitted to sleeping with someone else. When she attempted to leave, Weiss grabbed her feet. She escaped only by jumping through a glass window. The emergency room nurse testified that Weiss told him that Stephens assaulted her by choking her. She told the nurse that her left ear was ringing, and she had multiple abrasions on her back, ribs, and above her left knee. Stephens

equates the letter to a jailhouse confession and claims it is highly prejudicial, but the part of the letter that is the most adverse to Stephens is where he admits to committing battery. In the letter, Stephens admits to sticking his finger into Weiss's vagina, but he also in essence admits to this in his brief. The foregoing evidence overwhelmingly supports Stephens's conviction for battery as well as his other convictions.

Stephens also argues that the State failed to establish a proper chain of custody of the letter. At trial, Stephens only challenged the authenticity of the letter and not its chain of custody. Stephens is bound by the scope and nature of the argument made at trial. *Woolbright v. State*, 357 Ark. 63, 160 S.W.3d 315 (2004). His argument therefore is not preserved for appellate review. Moreover, Stephens cites no authority in support of this argument.

Affirmed.

HART and VAUGHT, JJ., agree.